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# THE ACHILLES' HEEL OF DRESS CODES: THE DEFINITION OF PROPER ATTIRE IN PUBLIC SCHOOLS

## I. INTRODUCTION

In a perfect world, public school students could express themselves through clothing and symbols, free of state interference. But in a perfect world, students could attend class without fear of violence or fear of causing disruption to the discipline of the learning environment. Since we do not live in a perfect world, many school districts have attempted to protect the learning environment by enacting dress codes.<sup>1</sup> The Achilles' Heel<sup>2</sup> of dress codes is the difficulty of defining what is proper attire in the classroom without violating the basic constitutional rights of students. Like the mythic hero Achilles, dress codes suffer from a number of inherent weaknesses, such as being too vague, being overbroad, not completely addressing the problems that they were created to solve, and repeated litigation of similar issues throughout various jurisdictions.<sup>3</sup>

Recent incidents of violence at schools across the United States, like the 1999 shootings in Littleton, Colorado,<sup>4</sup> have led to calls for more safety measures

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1. See discussion *infra* Part II.

2. Achilles was a hero in Greek mythology. Thetis, his mother, was very protective, and when Achilles was an infant, she dipped him in the river Styx, which made every part of Achilles' body invulnerable, except the heel by which she held him. Thetis also made Achilles disguise himself as a girl to avoid a violent death. Unfortunately, all of these efforts proved futile. Achilles was killed when a poisoned arrow pierced his heel. THOMAS BULLFINCH, BULLFINCH'S MYTHOLOGY 169 (Edmund Fuller ed., Dell Publishing Co. 1983) (1855).

3. See discussion *infra* Part V.D.

4. See *Violence and Safety*, Education Week on the Web, at <http://www.edweek.org/context/topics/cfm?id=39> (last visited Oct. 23, 1999).

Dec. 6, 1999 - A 13-year-old student fired at least 15 rounds at Fort Gibson Middle School in Fort Gibson, Okla., wounding four classmates . . . .

Nov. 19, 1999 - A 13-year-old girl was shot in the head in a school at Deming, N.M. [by a 12-year-old boy]. . . .

May 20, 1999 - A 15-year-old boy opened fire at Heritage High School in Conyers, Ga., with a .357-caliber handgun and rifle, wounding six students. . . .

April 20, 1999 - Two students at Columbine High School in Littleton Colo., killed 12 students and a teacher and wounded 23 before killing themselves.

May 21, 1998 - Two teenagers were killed and more than 20 people hurt when a teenage boy opened fire at a high school in Springfield, Ore. . . .

May 19, 1998 - Three days before his graduation, an 18-year-old honor student opened fire at a high school in Fayetteville, Tenn., killing a classmate who was dating his ex-girlfriend. . . .

to be taken by school districts.<sup>5</sup> Schools have long regulated students' appearance for the purpose of maintaining discipline,<sup>6</sup> but the public's perception that violent crime is on the increase in public schools has led to calls for more effective measures.<sup>7</sup> Some schools have expanded the scope of their dress codes,<sup>8</sup> while others have instituted mandatory uniform policies.<sup>9</sup> As more schools expand their dress code policy, there have been challenges to the constitutionality of these policies.<sup>10</sup> The courts have protected students' rights to expression in some of these cases,<sup>11</sup> but in others the courts have upheld the states' right to restrict speech in the interest of promoting disciplined learning environments.<sup>12</sup>

Two questions arise in analyzing dress codes in public schools: What are the

April 24, 1998 - A science teacher was killed in front of students at an eighth-grade dance in Edinboro, Pa. [by 15-year-old student]. . . .

March 24, 1998 - Four girls and teacher were killed and 10 people wounded at a middle school in Jonesboro, Ark., when two boys, 11 and 13, fired from nearby woods. . . .

Dec. 1, 1997 - Three students were killed and five others wounded at Heath High School in West Paducah, Ky. [by a 14-year-old student]. . . .

Oct. 1, 1997 - A 16-year-old boy in Pearl, Miss., was sentenced to life in prison for killing his mother, then going to his high school and shooting nine students, two fatally. . . .

Feb. 19, 1997 - A 16-year-old boy took a shotgun and a bag of shells to school in Bethel, Alaska, and killed the principal and a student and injured two others.

*Recent School Shootings in the U.S.*, TULSA WORLD, Mar. 1, 2000, at A6.

5. See, e.g., *Prepared Statement of Kevin P. Dwyer, National Association of School Psychologists, Before the House Committee on Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources*, FED. NEWS SERV., May 21, 1999 [hereinafter *Dwyer*].

6. See, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Ferrell v. Dallas Indep. Sch. Dist.*, 392 F.2d 697 (5th Cir. 1968).

7. See *MANUAL ON SCHOOL UNIFORMS*, U.S. Dept. of Ed. (1996).

8. See, e.g., Christopher B. Gilbert, *We are What We Wear: Revisiting Student Dress Codes*, 1999 BYU EDUC. & L.J. 3.

9. See *id.*

10. A number of recent law journal and review articles have addressed the issue of the constitutionality of dress codes and uniforms in public schools. See generally Lisa A. Brown, *Understanding the Constitutional Rights of School Children*, 34-APR HOUS. LAW. 40 (1997) (examining the limits of freedom of speech and religion in public schools); Philip T. K. Daniel, *Violence and the Public Schools: Students Rights have been Weighed in the Balance and Found Wanting*, 27 J.L. & EDUC. 573 (1998) (exploring the reduction in students' rights as schools react to increasing violence); Gilbert, *supra* note 8 (discussing the difficulty of drafting a dress code); Renah R. Holmes, *First Amendment Rights: May a School Ban Religious Symbols that are Arguably Gang Related?*, 27 J.L. & EDUC. 511 (1998) (examining *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659 (S.D. Tex. 1997)); Alison G. Myhra, *No Shoes, No Shirt, No Education: Dress Codes and Freedom of Expression Behind the Postmodern Schoolhouse Gates*, 9 SETON HALL CONST. L.J. 337 (1999) (arguing that schools should consider carefully the effects that dress codes will have on students); Troy Y. Nelson, *If Clothes Make the Person, Do Uniforms Make the Student?: Constitutional Free Speech Rights and Student Uniforms*, 118 ED. LAW REP. 1 (1997) (supporting the proposition that uniforms can contribute to public school safety as part of an overall safety program); Alyson Ray, *A Nation of Robots? The Unconstitutionality of Public School Uniform Codes*, 28 J. MARSHALL L. REV. 645 (1995) (arguing that mandating uniforms in public schools is an unconstitutional limitation on students' first amendment right to self-expression); Dena M. Sarke, *Coed Naked Constitutional Law: The Benefits and Harms of Uniform Dress Requirements in American Public Schools*, 78 B. U. L. REV. 153 (1998) (arguing that schools should restrict expression only when necessary).

11. See, e.g., *Chalifoux*, 976 F. Supp. at 659.

12. See generally *Isaacs v. Bd. of Educ. of Harvard County, Md.*, 40 F. Supp. 2d 335 (D. Md. 1997); *Stephenson v. Davenport*, 110 F.3d 1303 (8th Cir. 1997); *City of Harvard v. Gaut*, 660 N.E.2d 259 (Ill. App. Ct. 1996); *Pyle v. S. Hadley Sch. Comm.*, 861 F. Supp. 157 (D. Mass. 1994).

limits of the state's right to restrict a student's appearance? Is there a better solution?

The Supreme Court has answered the first question by establishing tests for state regulation of appearance in several key cases challenging state regulation of expression.<sup>13</sup> These cases identify what symbolic speech is protected and the power of the state to protect its interest in education.

The answer to the second question may lie in a growing trend in major school districts across the country: uniforms. Since uniform policies affirmatively establish what a student may wear, they reduce the possibility of being found void for vagueness or overbreadth. Schools that have introduced uniforms have shown dramatic changes. Uniforms are also capable of addressing problems that dress codes are unable to address.<sup>14</sup>

This article examines the constitutionality and weaknesses of dress codes in public schools, and suggests, as an alternative, the implementation of uniforms, which do not suffer from many of the inherent weaknesses of dress codes. Section II explores the justifications offered to impose clothing and appearance restrictions on students and the scope of those restrictions. Section III looks at the limits on the government's power to suppress free speech in schools. Section IV examines some recent challenges to dress codes. Section V analyzes the inherent weaknesses of dress codes. Section VI looks at the recent introduction of uniform codes into many large school districts and why uniforms do not suffer the same vulnerabilities as dress codes.

## II. THE JUSTIFICATION AND SCOPE OF DRESS CODES

Dress codes have been justified as a means of creating a more disciplined learning environment.<sup>15</sup> To achieve this discipline school districts have prohibited a broad range of symbols and apparel.<sup>16</sup> A student's attire can lead to violence motivated by gang affiliation or competition over expensive clothing.<sup>17</sup> The discipline of the learning environment can also be disturbed by clothing that is distracting or disruptive.<sup>18</sup>

The growth of gang activity in public schools is the most frequently cited justification for dress codes.<sup>19</sup> Gang violence in the nation's schools has been on the rise.<sup>20</sup> Gang violence on campus includes stabbings, carrying weapons,

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13. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Spence v. Washington*, 418 U.S. 405 (1974); *United States v. O'Brien*, 391 U.S. 367 (1968).

14. See discussion *infra* Part VI.

15. See, e.g., *Ferrell v. Dallas Indep. Sch. Dist.* 392 F.2d 697 (5th Cir. 1968).

16. See *infra* Part III.A.

17. See Rene Sanchez, *A Uniform Policy*, WASH. POST, Sept. 13, 1998, at W5.

18. See discussion *infra* Part IV.A.

19. See Tina L. Kandakai et al., *Mothers' Perceptions of Factors Influencing Violence in Schools*, J. SCH. HEALTH, May 1, 1999, at 189; Brian Weber, *Poll: 7 in 10 Back Tougher School Rules Survey finds Coloradans want Students to Follow Dress Codes, Call Teachers "Ma'am" and "Sir,"* ROCKY MTN. NEWS (Denver), Oct. 10, 1999, at 4A.

20. See Adrienne D. Coles, *Federal Report on Gang Increase Met with Caution*, EDUCATION WEEK ON THE WEB, at <http://www.edweek.org/ew/1998/32gang.h17> (last visited Nov. 15, 1999).

threatening teachers and fellow students, and selling drugs.<sup>21</sup> The percentage of students reporting the presence of street gangs at their schools nearly doubled from 1989 to 1995.<sup>22</sup> Gangs have long used clothing and symbols to identify themselves,<sup>23</sup> and school officials and lawmakers believe that by prohibiting possible gang symbols, they can prevent incidents of gang violence.<sup>24</sup>

Dress codes have also been enacted to prevent disruption in the classroom.<sup>25</sup> Things that have been prohibited as disruptive include: extreme hairstyles and colors; sexually suggestive clothing; clothing with messages that are vulgar, violent or promote alcohol, drugs, or tobacco; and clothing associated with violence.<sup>26</sup>

Many symbols and articles of clothing have been specifically identified as being disruptive or gang-related.<sup>27</sup> The following is a partial list of items that have been prohibited by public school dress codes or have been found to be gang symbols: the numbers 311, 2, 4, 5, 30;<sup>28</sup> all athletic team insignia;<sup>29</sup> Doc Marten shoes;<sup>30</sup> baggy pants;<sup>31</sup> a backward "R";<sup>32</sup> the letters "BGD" and "BK";<sup>33</sup> the colors red, black, white, green and blue;<sup>34</sup> "Old English"-style writing;<sup>35</sup> peace symbols;<sup>36</sup> crowns;<sup>37</sup> popcorn braids;<sup>38</sup> dollar signs;<sup>39</sup> Playboy bunnies;<sup>40</sup> pitchforks;<sup>41</sup> the color combinations black/gold and blue/black;<sup>42</sup> Converse shoes;<sup>43</sup> winged hearts;<sup>44</sup> collegiate logos;<sup>45</sup> backward swastikas;<sup>46</sup> the word "vegan";<sup>47</sup> the Cuban flag;<sup>48</sup> the

21. *See id.*

22. *See Coles, supra* note 20.

23. *See id.*

24. Keith A. King, *Should School Uniforms be Mandated in Elementary Schools?*, 68 J. SCH. HEALTH 32 (1998).

25. *See id.*

26. *See infra* Part IV.D..

27. *See infra* Part III.A-B.

28. *See Brenda Davis, Gang Garb Goes From Crips to Genesis*, U-WIRE, Aug. 31, 1998, at 1, at 1998 WL 17733518.

29. *See Richard Fossey & Todd A. DeMitchell, Litigating School Dress Codes*, EDUCATION WEEK ON THE WEB, at <http://www.edweek.org/ew/1997/25fosseyh16> (last visited Oct. 1, 1999).

30. *See Davis, supra* note 28.

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. *See Davis, supra* note 28.

37. *See id.*

38. *See School Sued for Cutting Boy's 'Popcorn Braids'*, PLAIN DEALER (CLEVELAND), Feb. 22, 1999, at B2.

39. *See Harvard v. Gaut*, 660 N.E.2d 259, 261 (Ill. App. Ct. 1996)

40. *See id.*

41. *See id.*

42. *See infra* notes 151-52.

43. *See Harvard*, 660 N.E.2d at 261.

44. *See id.*

45. *See id.*

46. *See id.*

47. *See Vegans and Violence*, SALT LAKE TRIB., Mar. 8, 1999, at A6 [hereinafter *Vegans*].

48. *See John Gibeaut, Who's Raising the Kids: Parents are Supposed to be Role Models. With Many Receiving Failing Grades in That Department, Lawmakers are Cracking Down on Teens - With Curfews*

Star of David;<sup>49</sup> pentagrams;<sup>50</sup> rosaries;<sup>51</sup> and crosses.<sup>52</sup> As one police officer specializing in gang activity noted, "the list is endless."<sup>53</sup>

Since the justification for dress codes is to prevent violence and disruption in the classroom, the list of prohibited symbols and apparel will continue to grow as gangs adopt new symbols and as school officials find new disruptions to the discipline of the classroom.

### III. THE FOUNDATION FOR STATE REGULATION OF STUDENT APPEARANCE

The First Amendment grants all Americans the right to free expression.<sup>54</sup> This freedom can be limited when students enter the public school classroom.<sup>55</sup> The courts have looked at the limits of students' rights of freedom of expression in public schools in a series of cases and have held that students, while enjoying much of the freedom promised by the First Amendment, do not necessarily enjoy the same range of freedom that a non-student adult might enjoy.<sup>56</sup>

Four cases illustrate the limits on First Amendment rights for public school students. *Ferrell v. Dallas Independent School District* highlights the government's interest in protecting the discipline of the school environment and the constitutionally acceptable power of the state to limit appearance.<sup>57</sup> The other three cases established tests for the limits of governmental regulation of speech and have been often quoted in suits challenging public school dress codes: *United States v. O'Brien*,<sup>58</sup> *Tinker v. Des Moines Independent School District*,<sup>59</sup> and *Spence v. Washington*.<sup>60</sup> *O'Brien* set out a test for determining whether laws limiting non-speech elements of expression were constitutional.<sup>61</sup> *Tinker* directly addressed the rights of students in public schools to express themselves through clothing.<sup>62</sup> *Spence* established a test for the constitutional protection of symbolic speech.<sup>63</sup> These cases are often cited in challenges to public school dress codes.<sup>64</sup>

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and Dress Codes, 83-Aug A.B.A. J. 62, 67 (1997).

49. See *Star of David Ban Lifted by Board*, TIMES UNION (ALBANY, NY), Aug. 28, 1999, at E1 [hereinafter "Star of David"].

50. See Justin Hyde, *Pentagram Ban Debated in Court*, GRAND RAPIDS PRESS, Mar. 3, 1999, at B4.

51. See *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659 (S.D. Tex. 1997).

52. See Andrea Billups, *Alabama Girl Fights School Ban on Displaying Cross Necklace*, WASH. TIMES (D.C.), Oct. 15, 1999, at A11 [hereinafter "Alabama Girl"].

53. See *Harvard*, 660 N.E.2d at 261.

54. See U.S. CONST. amend. I ("Congress shall make no law... abridging the freedom of speech...").

55. See discussion *infra* Part III.A.

56. See, e.g., *Ferrell v. Dallas Indep. Sch. Dist.*, 392 F.2d 697 (5th Cir. 1968).

57. See *id.*

58. 391 U.S. 367 (1968).

59. 393 U.S. 503 (1969).

60. 418 U.S. 405 (1974).

61. 391 U.S. at 382.

62. 393 U.S. 503.

63. 418 U.S. at 411.

64. See, e.g., *Isaacs v. Bd. of Educ. of Harvard County, Md.*, 40 F. Supp. 2d 335 (D. Md. 1997); *Stephenson v. Davenport*, 110 F.3d 1303 (8th Cir. 1997); *City of Harvard v. Gaut*, 660 N.E.2d 259 (Ill. App. Ct. 1996); *Chalifoux v. New Caney Indep. Sch. Dist.* 976 F. Supp. 659 (S.D. Tex. 1997); *Pyle v. S.*

### A. *Permissible Regulation of Student Appearance: Ferrell*

Public school restrictions on a student's appearance have been upheld as constitutional to protect the interest of the state in educating the nation's children. In 1968, the U.S. Court of Appeals for the Fifth Circuit held in *Ferrell v. Dallas Independent School District* that "the interest of the state in maintaining an effective and efficient school system is of paramount importance."<sup>65</sup>

*Ferrell* involved three male students who were denied enrollment in high school because they had "'Beatle'<sup>66</sup> type haircuts."<sup>67</sup> The students had this haircut because they were members of a band and were required by their contract with their business manager to maintain this style of haircut.<sup>68</sup> The high school banned long hair on male students because it would cause "commotion, trouble, distraction and a disturbance in the school . . . ."<sup>69</sup>

The students claimed that they were exercising their right to free speech, but the court held that this right had limits. "The Constitution does not establish an absolute to free expression of ideas . . . . The constitutional right to free exercise of speech, press, assembly, and religion may be infringed by the state if there are compelling reasons to do so."<sup>70</sup> In this case, the court found that the state's interest in regulating the students' appearance outweighed the students' right of free expression. "That which so interferes or hinders the state in providing the best education possible for its people, must be eliminated or circumscribed as needed. This is true even when that which is condemned is the exercise of a constitutionally protected right."<sup>71</sup>

Since there was sufficient evidence that "Beatle" type haircuts caused a substantial disruption and would hinder the state's ability to deliver the best education possible, the court held that the school's policy was constitutional.<sup>72</sup>

### B. *Protection of Non-Speech Elements and O'Brien*

The courts have defined speech to include more than words.<sup>73</sup> Free speech, as interpreted by the Supreme Court, includes both verbal and nonverbal

Hadley Sch. Comm., 861 F. Supp. 157 (D. Mass. 1994).

65. *Ferrell*, 392 F.2d at 703.

66. The Beatles were a "British rock group. Perhaps the most influential band in the history of 20th-century popular music." OXFORD FAMILY ENCYCLOPEDIA 72 (1st ed. 1997).

67. *Ferrell*, 392 F.2d at 698. The school also regulated aspects of female students' appearance by sending them home for wearing revealing clothing, by requiring them to remove excessive make-up, and by expecting them to wear dresses, not pants. *Id.*

68. *See id.*

69. *See id.* at 699. The school principal cited several examples of problems caused by male students who had a "Beatle" type haircut. These problems included threats of violence against long haired students by short haired students. *Id.*

70. *Id.* at 702-03.

71. *Ferrell*, 392 F.2d at 703.

72. *Id.*

73. *See Stromberg v. Cal.*, 283 U.S. 359 (1931). In *Stromberg*, the court found that speech included symbols. In this case, the defendant raised a red flag every morning as a political statement. The court upheld the defendant's right to display the flag as constitutionally protected speech. *See id.*

expression.<sup>74</sup> Conduct may combine both “speech” and “non-speech” elements.<sup>75</sup> For a law regulating speech that includes “non-speech” elements to be constitutional, there must be a sufficiently important governmental interest in restricting the non-speech element.<sup>76</sup>

The non-speech element at issue in *O'Brien* was O'Brien's burning of his draft card on the steps of the South Boston Courthouse in protest of the conflict in Vietnam.<sup>77</sup> O'Brien was found to be in violation of a federal statute.<sup>78</sup> Title 50, app., United States Code, Section 462 (b), which made it an offense to knowingly destroy or mutilate a draft card.<sup>79</sup> O'Brien stated that he burned his draft card to express his anti-war beliefs.<sup>80</sup>

To determine whether a law that regulates such speech is constitutional, the court established a four-part test in *O'Brien*.<sup>81</sup> First, the statute limiting non-speech elements must be within the constitutional power of the government.<sup>82</sup> Second, it must further an important or substantial governmental interest.<sup>83</sup> Third, the governmental interest must be unrelated to the suppression of free expression.<sup>84</sup> Fourth, the incidental restriction on First Amendment freedoms can be no greater than is essential to the furtherance of the governmental interest.<sup>85</sup>

Applying this test to the facts in *O'Brien*, the Supreme Court found that O'Brien's actions were not protected symbolic speech because: 1) Congress has the constitutional power to make all laws necessary and proper to raise and support armies; 2) the government had a substantial interest in assuring the availability of draft cards by preventing their destruction; 3) the statute was not aimed at suppressing expression; and 4) the incidental restriction on speech was limited to the non-communicative impact of O'Brien's conduct.<sup>86</sup>

The test established in *O'Brien* has been applied in other cases that have challenged the government's limitation on free speech, most notably those challenging public school dress codes.<sup>87</sup>

### C. *The Limits on the State's Power to Control Appearance: Tinker*

The Supreme Court addressed clothing as speech in *Tinker*.<sup>88</sup> *Tinker*

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74. See *United States v. O'Brien*, 391 U.S. 367 (1968). However, the court added that they “cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.” *Id.* at 376.

75. See *id.*

76. See *id.*

77. See *id.* at 369.

78. 50 U.S.C. app. § 462(b) (1994).

79. See *O'Brien*, 391 U.S. at 370.

80. See *id.* at 369.

81. See *id.* at 382.

82. See *id.*

83. See *id.*

84. See *id.*

85. See *O'Brien*, 391 U.S. at 382.

86. See *id.*

87. See discussion *infra* Part III.

88. 393 U.S. 503 (1969).



involved three public school students who were suspended from school for wearing black armbands in protest of the Vietnam War.<sup>89</sup> The court distinguished this case from school regulations limiting skirt length, type of clothing and student deportment.<sup>90</sup> The Supreme Court held that the wearing of black armbands to make a political statement was akin to “pure speech,” and therefore entitled to protection under the First Amendment.<sup>91</sup>

The court, in coming to this conclusion, acknowledged that public schools had the right to regulate student activities and appearance to some extent, but that the Constitution placed limits on how far the schools could go in regulating student expression.

In order for the State, in the person of school officials, to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than [a] desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,” the prohibition cannot be sustained.<sup>92</sup>

The court emphasized that students enjoy Constitutional rights that cannot be arbitrarily suppressed by school officials.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are “persons” under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.<sup>93</sup>

The *Tinker* test requires that in cases where pure speech is at issue, the state cannot prohibit students’ expression unless there is a substantial risk of material disruption to the learning environment.

#### *D. The Test for Symbolic Speech: Spence*

In 1974, the Supreme Court heard *Spence v. Washington*, and established a two-prong test for symbolic speech to receive protection under the Constitution.<sup>94</sup> Spence was a college student who hung a United States flag with a peace symbol affixed to it in his apartment window.<sup>95</sup> He testified that he had hung the flag to protest the invasion of Cambodia and the recent killings at Kent State University.<sup>96</sup> Spence was arrested for violating a Washington statute that forbade

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89. *Id.* at 504.

90. *See id.* at 507-08.

91. *See id.* at 514.

92. *Id.* at 509.

93. *Id.* at 511.

94. 418 U.S. 405 (1974).

95. *See id.* at 406.

96. *See id.* at 408.

the exhibition of a United States flag to which is attached or superimposed figures, symbols, or other extraneous material.<sup>97</sup>

The court held that Spence's actions were protected under the constitutional guarantee of freedom of expression, because displaying a flag was symbolic speech.<sup>98</sup> The court established a two-part test to determine what symbolic speech is protected. First, there must be an intent to convey a particularized message.<sup>99</sup> Second, there must be a likelihood that, in view of the surrounding circumstances, the message would be understood by those who viewed it.<sup>100</sup>

In *Spence*, the court found that the flag had long been used as a symbol.<sup>101</sup> Spence did intend to convey a message of protest.<sup>102</sup> At the time that the flag was displayed, many would have understood the message of protest.<sup>103</sup> "[I]t would have been difficult for the great majority of citizens to miss the drift of the appellant's point at the time he made it."<sup>104</sup> Spence's actions were protected symbolic speech.<sup>105</sup>

The court, however, indicated that the fact that the flag was displayed on private property lowered the government's interest in controlling the expression.<sup>106</sup> "[T]he activity occurred on private property, rather than in an environment over which the State by necessity must have certain supervisory powers unrelated to expression."<sup>107</sup>

### *E. The Tests*

The tests used by courts in determining whether dress codes are enforceable under the constitution derive from the Supreme Court decisions in *Tinker*, *Spence* and *O'Brien*.<sup>108</sup> Pure speech may only be restricted if there is a substantial risk of a material disruption to the learning environment. Clothing may be speech if there

97. *See id.* at 406-08.

98. *See id.* at 414-15.

99. *See id.* at 411.

100. *See Spence*, 498 U.S. at 411.

101. *Id.* at 413.

102. *See id.* at 408.

103. *Id.* at 414-15. The court discussed the national mood at the time that the flag was displayed in footnote ten to highlight the ability of the public to understand the message being conveyed by Spence's flag.

Appellant's activity occurred at a time of national turmoil over the introduction of United States forces into Cambodia and the deaths at Kent State University. It is difficult now, more than four years later, to recall vividly the depth of emotion that pervaded most colleges and universities at the time, and that was widely shared by young Americans everywhere. A spontaneous outpouring of feeling resulted in widespread action, not all of it rational when viewed in retrospect. This included the closing down of some schools, as well as other disruptions of many centers of education. It was against this highly inflamed background that appellant chose to express his own views in a manner that can fairly be described as gentle and restrained as compared to the actions undertaken by a number of his peers.

*Id.* at n.10.

104. *Id.* at 410.

105. *See id.* at 414.

106. *See Spence*, 418 U.S. at 414.

107. *Id.* at 411.

108. *See discussion supra* Part III.B.-D.

is intent to convey a particularized message and likelihood that those who view it would understand the message. Nonverbal expression not rising to the level of pure speech can be restricted if: (1) the restriction is within the power of the government; (2) the restriction furthers a substantial government interest; (3) the government's interest is unrelated to the suppression of speech; and (4) the restriction on speech is no greater than necessary. These tests are applied by courts in analyzing many dress code challenges.

#### IV. THE OPPOSITION TO DRESS CODES IN PUBLIC SCHOOLS

The 1990s have seen a number of cases that have challenged the validity of dress codes in public schools. Students have challenged restrictions on social expression, cultural expression, self expression, and religious expression. The courts have protected expression that rises to the level of pure speech, but not self expression or cultural expression. The courts have struck down ordinances and school policies that are vague or overbroad. These cases also stand as examples of the difficulty that school boards face in creating dress codes that will not violate the First Amendment.

##### A. *Cultural Expression: Isaacs*

In 1999, the United States District Court for the District of Maryland distinguished between cultural expression and political expression in *Isaacs v. Board of Education*.<sup>109</sup> The court found a high school prohibition on hats constitutional, including a headwrap worn by a student to celebrate her culture.<sup>110</sup>

Shermia Isaacs, an African-American student at Harper's Choice Middle School in Maryland, wore a multi-colored headwrap to school one day to celebrate her African-American and Jamaican cultural heritage. She was told to remove the headwrap because it violated the school's "no hats" policy.<sup>111</sup>

The court used the tests established in *O'Brien*, *Spence* and *Tinker* to determine whether Isaacs' headwrap was protected symbolic speech.<sup>112</sup> Under the *Spence* two prong test, the court found that the second prong of the test, whether the message would be understood by those who viewed it, may not have been met. Isaacs' fellow students may not have understood that the headwrap celebrated African-American and Jamaican culture.<sup>113</sup>

The court then determined the amount of protection that the headwrap warrants under *Tinker*. The *Isaacs* court distinguished *Tinker* from the facts in the present case. The court held that *Tinker* was conveying a particularized political message, while Isaacs was not sending a particularized message, so the headwrap

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109. 40 F. Supp. 2d 335 (D. Md. 1997).

110. *See id.*

111. *See id.* at 336. The school rules prohibited students from wearing hats, but made an exception for religious headgear, such as yarmulkes and Muslim hijabs. *See id.*

112. *See id.* at 337.

113. *See id.*

was not "pure speech."<sup>114</sup>

The court then applied the *O'Brien* test to the "no hats" rule.<sup>115</sup> The rule was explained by the school as promoting the government interest in education, because hats can: 1) cause increased horseplay and conflict in the hallways; 2) obscure teachers' views of students and students' view of the blackboard; 3) allow students to hide contraband; and 4) foster a less respectful climate for learning.<sup>116</sup> The court held that under the *O'Brien* test, the "no hats" rule is constitutional because the rule was necessary to foster a disciplined learning environment, and the restriction was not greater than necessary to achieve its goal.<sup>117</sup>

### B. *Self Expression and Vagueness: Stephenson*

The Court of Appeals for the Eighth Circuit held in 1997 that a school district rule banning gang symbols was unconstitutionally vague and could lead to abuse.<sup>118</sup> In *Stephenson v. Davenport Community School District*, a student with a cross tattoo was forced by the school district to remove it.<sup>119</sup> The tattoo was merely self expression and did not qualify for First Amendment protection, but the district regulation was unconstitutional because it did not define specifically what was prohibited.<sup>120</sup>

In 1990, Brianna Stephenson had a cross tattooed on her hand.<sup>121</sup> This cross was intended to be a form of self expression, not a religious symbol or gang sign.<sup>122</sup> She had this tattoo for two years before any problem arose.<sup>123</sup>

In 1992, in response to growing gang activity in the school district,<sup>124</sup> the superintendent of the school district instituted a new policy prohibiting the display of gang symbols.<sup>125</sup> Shortly after this policy went into effect, Stephenson was sent to school officials, who determined that the cross tattoo was a gang symbol.<sup>126</sup> Stephenson was not involved in gang activity and no other student considered the cross tattoo a gang symbol. The school compelled Stephenson to remove the tattoo through a painful surgical procedure.<sup>127</sup>

In its analysis, the court held that Stephenson's tattoo did not receive First Amendment protection because it was self expression, but that the school's gang

114. See *Isaccs*, 40 F. Supp. 2d at 337id.

115. See *id.* at 338.

116. See *id.* at 338.

117. See *id.*

118. See *Stephenson v. Davenport Cmty. Sch. Dist.*, 110 F.3d 1303 (8th Cir. 1997).

119. *Id.*

120. See *id.* at 1307 n.4.

121. See *id.* at 1305.

122. See *id.*

123. See *id.*

124. See *Stephenson*, 110 F.3d at 1305. Gang activity had recently increased at schools in the district. Students brought weapons to class, violence occurred between members of rival gangs, and gang members tried to intimidate non-gang members into joining their gangs. See *id.*

125. See *id.* The district's "Proactive Disciplinary Position" stated that "gang related activities such as display of 'colors,' symbols, signals, signs, etc., will not be tolerated on school grounds." *Id.*

126. See *id.* at 1309.

127. See *id.* at 1311.

regulation was void for vagueness.<sup>128</sup> The court, in a footnote, dismissed Stephenson's assertion that her cross tattoo was constitutionally protected speech.<sup>129</sup> Stephenson did not claim that the cross was intended for political or religious expression; she only intended the cross to be self expression. The court applied the *Spence* test to determine whether Stephenson's cross deserved First Amendment protection. The court found that there was no intent to convey a particularized message.<sup>130</sup> Therefore, the cross tattoo was not constitutionally protected speech.<sup>131</sup>

The court found the school's gang regulation void for vagueness because the regulation did not sufficiently define the word "gang,"<sup>132</sup> and because it allowed the school administrators and local police unfettered discretion to decide what qualified as a gang symbol.<sup>133</sup>

To pass constitutional muster, a regulation must be sufficiently clear enough that readers do not have to guess at its meaning.<sup>134</sup> The word "gang" has many meanings; since it was left undefined in the school's regulation, students must guess at its meaning. The court noted that no federal cases have upheld a regulation that prohibited gang activity without defining the word "gang."<sup>135</sup> Since the school failed to provide a definition of "gang" in the regulation, the court held that the regulation was vague.<sup>136</sup>

The court also found a danger of over-labeling students as gang members existed because there were no specific definitions of terms for school officials and police to follow.<sup>137</sup> The court stated that to prevent arbitrary and discriminatory enforcement, regulations must be specific.<sup>138</sup> Gang symbols change constantly, so the regulation must define with care what is prohibited.<sup>139</sup> Since the decision as to what was or was not a gang symbol was left up to school officials, Stephenson was forced to remove a tattoo that neither she nor her fellow students considered a gang symbol.<sup>140</sup>

Although Stephenson's cross tattoo was not protected free speech under the First Amendment, the school's regulation on gang symbols was void for vagueness because it failed to provide adequate notice to students what was prohibited, and because it left the power to define gang symbols in the hands of school officials and local police, creating a danger of arbitrary enforcement.<sup>141</sup>

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128. See *Stephenson*, 110 F.3d at 1312.

129. See *id.* at 1307 n.4.

130. See *id.* at 1311.

131. See *id.*

132. See *id.* at 1312.

133. See *id.*

134. See *Stephenson*, 110 F.3d at 1311.

135. See *id.* at 1310.

136. See *id.*

137. See *id.*

138. See *id.* at 1311.

139. See *id.* at 1310.

140. See *Stephenson*, 110 F.3d at 1313.

141. See *id.*

C. *Overbreadth*: Harvard v. Gaut

In *City of Harvard v. Gaut*, the Illinois Court of Appeals found a city ordinance banning gang clothing to be overly broad because it prohibited a substantial amount of constitutionally protected speech.<sup>142</sup>

Todd Gaut was arrested for violating Harvard's gang activity ordinance<sup>143</sup> by wearing a six-pointed star.<sup>144</sup> Gaut was not Jewish; he was wearing the star as a gang symbol.<sup>145</sup> At Gaut's trial, the Harvard police officer primarily responsible for monitoring gang symbols testified as to what could be considered a gang symbol.<sup>146</sup> This included the color combination black and gold<sup>147</sup> or black and blue,<sup>148</sup> Duke University baseball caps,<sup>149</sup> Raiders caps, Bulls jackets and caps, Converse shoes, caps tilted to the left or right, five pointed stars, six pointed stars, backwards swastikas, Playboy bunnies,<sup>150</sup> Spanish crosses, and winged hearts.<sup>151</sup> The officer stated further that "the list is endless."<sup>152</sup>

The appellate court held that the ordinance was invalid on its face because it prohibits both gang members and non-gang members from engaging in constitutionally protected symbolic speech.<sup>153</sup> The court cited *Spence* for the proposition that symbolic speech may be protected,<sup>154</sup> and *Tinker* for the proposition that protected symbolic speech can include clothing.<sup>155</sup> "Since *Tinker*, many decisions have recognized that clothing which identifies the wearer with a particular organization is a protected form of 'speech,' even where the organization is morally odious to most people or is known to have a history of

142. 660 N.E.2d 259 (Ill. App. Ct. 1996).

143. *See id.* at 260. The ordinance read:

It shall be unlawful for any person within the City to wear known gang colors, emblems, or other insignia, or appear to be engaged in communicating gang-related messages through the use of hand signals or other means of communication.

*Id.*

144. *See id.* at 260. The Star of David is a "[s]ix pointed device formed by opposing two equilateral triangles. Known in Hebrew as *Magen David* or *Mogen David*, it was used as an emblem or magic sign by pagans, Christians, and Muslims, and gradually found its way into Judaism as a kabbalistic sign. It appears on the flag of the modern state of Israel." OXFORD FAMILY ENCYCLOPEDIA 637. It is also a symbol of gangs affiliated with the Folk Nation. Gang members are generally divided into two major factions, the Folk Nation and the People Nation. *See Ray, supra* note 10, at n.30. These two major factions include many types of gangs. *Id.* People Nation affiliates wear their identifiers to the left side, while Folk Nation affiliates wear their identifiers to the right side. *Id.*

145. *Harvard*, 660 N.E.2d at 260.

146. *See id.* at 261.

147. *See id.* (stating that black and gold are colors used by the Latin Kings and other People Nation affiliates).

148. *See id.* (stating that black and blue is the color combination used by Folk Nation affiliates).

149. *See id.* (stating that Duke University baseball caps are a Folk Nation insignia).

150. *See id.* (stating that the Playboy bunny is the symbol of the Chicago Party People gang). *See Ray, supra* note 10, at n.31.

151. *See Harvard*, 660 N.E.2d at 261.

152. *See id.*

153. *See id.* at 262.

154. *Spence v. Washington*, 418 U.S. 405 (1974).

155. *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969).

routine violence and illegal activity.”<sup>156</sup>

The court found the ordinance to be overbroad. The Harvard gang activity ordinance could potentially encompass constitutionally protected symbolic speech. The ordinance did not define what constituted a “gang symbol” or “gang colors;” it did not even define “gang.”<sup>157</sup> The police officers admitted that almost any color combination may be considered gang colors and almost any symbol may be a gang symbol.<sup>158</sup> “What is innocent today may become a gang symbol tomorrow according to the whim of the gangs themselves. Were a gang (however defined) to adopt red, white and blue as its colors or the crucifix as a symbol, every school and church would be ‘flashing’ gang signals.”<sup>159</sup>

In addition, the ordinance prohibits non-gang members from engaging in religious expression. The ordinance prohibits the wearing of religious symbols, which are also known gang symbols. For example, because the six-pointed star is a known gang symbol, it is prohibited by the ordinance. However, the city acknowledges that people also wear the six-pointed star to express their faith or ethnic pride. The six-pointed star is an emblem of Judaism known as the “Star of David.” Therefore, the ordinance prohibits the display of the six-pointed star which is protected by the rights of free speech and free exercise of religion under the first amendment.<sup>160</sup>

The court concluded that the ordinance was “substantially overbroad” and thus invalid because the ordinance prevented persons in the city of Harvard from engaging in activity that is constitutionally protected, specifically the free exercise of religion.<sup>161</sup> The court saw additional problems arising because potentially anything could be labeled a gang symbol and banned.<sup>162</sup>

In dicta, the court suggested that there were other ways the city could fight the gang problem without enacting ordinances that would stifle personal liberty, such as punishing criminal conduct more harshly where the conduct is gang-related; prohibiting the knowing promotion of gang activity; and prosecuting gang communication that breaches the peace.<sup>163</sup>

#### D. *Vagueness and Overbreadth: Chalifoux*

One federal district court found that a school dress code prohibiting two students from wearing rosaries was unconstitutional because the dress code was vague and it violated the student’s right to free speech.<sup>164</sup>

In *Chalifoux v. New Caney Independent School District*, two high school students wore rosaries to school for several weeks, until police officers approached the students on campus and informed the students that the rosaries were gang-

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156. See *Harvard*, 660 N.E.2d at 263.

157. See *id.* at 260.

158. See *id.* at 261.

159. See *id.* at 263.

160. See *id.*

161. See *id.* at 264.

162. See *Harvard*, 660 N.E.2d at 264.

163. See *id.*

164. See generally *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659 (D. Md. 1997).

related apparel.<sup>165</sup> The Student Handbook prohibited wearing gang-related apparel.<sup>166</sup> The two students were Catholic and wore the rosaries to express their faith.<sup>167</sup> Furthermore, they had encountered no problems during the several week period that they had worn the rosaries.<sup>168</sup>

The school district's Gang Liaison Officer was responsible for determining what was or was not "gang-related" apparel, based on his investigations.<sup>169</sup> The school district police were not charged with enforcing the school dress code.<sup>170</sup> The Gang Liaison Officer had observed several gang members wearing rosaries, and he determined that rosaries were now a gang symbol.<sup>171</sup>

The court examined the school dress code and found that it was overbroad because it violated the students' constitutional rights to free speech under the First Amendment.<sup>172</sup> The court also held that the language of the dress code was vague and could lead to arbitrary enforcement.<sup>173</sup>

In its free speech analysis, the court first applied the *Spence* test to determine whether the rosaries were protected symbolic speech.<sup>174</sup> To be protected, the rosaries had to convey a particularized message, and there had to be a great likelihood that the message would be understood by those observing it.<sup>175</sup> The students wore the rosaries to communicate their Catholic faith.<sup>176</sup> The crucifix in the center of a rosary is a universally recognized symbol of Christianity.<sup>177</sup> Therefore, there was a great likelihood that those viewing the rosary would understand the intended message. The court found "that the symbolic speech at issue in this case is a form of religious expression protected under the First

165. *See id.* at 663.

166. *See id.* at 664. The Student Handbook contained the following section:

The following gang-related apparel has been prohibited in school or at any school-related function:

1. Oversize apparel, including baggy pants which are worn low on the waist; overalls with one strap unfastened; pants that are cut off below the knees and worn with knee socks. (Pants should fit at the waist and have properly sewn hems.)
2. Any attire which identifies students as a group (gang-related) may not be worn to school or school related activities.
3. Baseball caps, hair nets, bandanas, sweatbands.

*Id.*

167. *See id.* at 663. A rosary is "[f]orm of meditational prayer that contemplates the life of Jesus and the Blessed Virgin Mary within the Catholic and Orthodox churches. A rosary is also the string of beads on which a count may be kept of the number of prayers said." OXFORD FAMILY ENCYCLOPEDIA 576.

168. *See id.*

169. *See Chalifoux*, 976 F. Supp. at 664.

170. *See id.*

171. *See id.* The officer had received information from a member of the United Homies that rosaries were a gang-symbol. The officer also stopped a car containing five United Homies. Two of the five gang members were wearing rosaries. On another occasion, the officer observed three gang members wearing rosaries. *See id.*

172. *See id.*

173. *See id.*

174. *Spence v. Washington*, 418 U.S. 405 (1974).

175. *Chalifoux*, 976 F. Supp. at 664.

176. *See id.*

177. *See id.* at 665.



Amendment.”<sup>178</sup>

The court then decided whether a *Tinker* or *O'Brien* analysis was more appropriate. *Tinker* protects “pure” speech, and requires that the rosaries cause a substantial and material disruption to school discipline before they can be prohibited. The *O'Brien* test requires that school regulation of “speech-plus-conduct,” in this case wearing “gang-related” apparel, must further an important government interest; that the government interest must be unrelated to the suppression of freedom of expression; and that the incidental restriction on First Amendment freedoms not be greater than necessary for the furtherance of the government’s interest.<sup>179</sup> The court stated:

In this court’s view, the facts of this case do not fall precisely into either test. *O'Brien* does not clearly apply because . . . the speech at issue is similar to the “pure speech” analyzed in *Tinker*. As stated before, *O'Brien* rested on the premise that a regulation aimed at restricting the conduct portion of a speech-plus-conduct message was entitled to additional deference. However, where pure speech is involved, there is no conduct element for the government to prohibit. Accordingly *O'Brien* appears to be inapplicable. This case is not an exact *Tinker* case, because . . . [the school’s] intent in enacting the ban on rosaries was not to restrict Plaintiff’s religious message.<sup>180</sup>

The court held that religious symbols are “akin to pure speech” and applied a *Tinker* standard.

Under a *Tinker* standard, the school must show that wearing rosaries causes substantial disruption to the discipline of the school. Since the students had worn the rosaries for some time without being identified as gang members or distracting other students, the court held that the school was unjustified in infringing upon the students’ religiously motivated speech.<sup>181</sup>

The court also noted that the ban on wearing rosaries would have failed under an *O'Brien* test because “the ban on rosaries does not appear . . . to be an essential or effective means of furthering the school’s interest in reducing gang activity.”<sup>182</sup> The court found that the dress code ban on wearing “gang-related” apparel was vague. A dress code is void when it is so vague that people of normal intelligence must guess at its meaning.<sup>183</sup>

While the court recognized that school officials need to have flexibility to deal with problems that may arise, the court held that when the school’s regulation threatens the right to free speech, greater specificity is required.<sup>184</sup> The court looked at the specific language to determine whether the dress code was vague.<sup>185</sup>

The Student handbook defines “gang related apparel” as “any attire which identifies

178. *See id.* at 666.

179. *See id.*

180. *See id.* (alteration in original).

181. *Chalifoux*, 976 F. Supp. at 668.

182. *See id.* at 667 n.3.

183. *See id.*

184. *See id.* at 668.

185. *See id.*

students as a group (gang-related).” This definition reveals little about what conduct is prohibited by [the district]. It is a well-recognized principle of language construction that it is inappropriate to define a word by using the same word in the definition. Accordingly, because [the district] defines “gang-related apparel” as attire which is “gang-related, the District’s definition is ambiguous. Moreover, the terms “any attire which identifies students as a group” modify “gang-related apparel” in such a way that it could include numerous extracurricular groups on campus that use certain attire or symbols for identification.<sup>186</sup>

The court stated that it would not be overly burdensome for the school to provide a list of prohibited items, and to update that list when necessary.<sup>187</sup>

The court also found that the dress code encouraged arbitrary enforcement. The school district’s Board of Trustees were the only policymaking authority for the district, but the dress code puts the responsibility for classifying apparel as gang-related in the hands of the police.<sup>188</sup> The dress code stated that law enforcement officers would decide what qualifies as gang-related apparel or symbols.<sup>189</sup> Because law enforcement officers decided what constituted gang symbols, and because the principal accepted their judgement without further inquiry, the school district’s police had the apparent authority to apply excessive discretion to ban any symbol or speech, even religious. Because the district’s Student Handbook lacked a sufficient definition for “gang-related apparel,” and because rosaries were not included on the list of gang-related apparel, the district’s policy failed to provide adequate notice to the students what was prohibited.<sup>190</sup> The court concluded that the prohibition on gang-related apparel was void for vagueness.<sup>191</sup>

#### E. “Vulgarity” and “Message”: Pyle

One of the most factually interesting cases challenging school dress codes was decided in 1994.<sup>192</sup> In *Pyle v. South Hadley School Committee*, two brothers challenged a school dress code at South Hadley High School in Massachusetts over a two-month period.<sup>193</sup> The United States District Court for the District of Massachusetts found that South Hadley High’s dress code was constitutional as to its prohibition of vulgarity on student clothing, but that the school could not regulate clothing that harasses, intimidates or demeans certain individuals or groups unless the clothing causes substantial disruption in the daily operations of the school.<sup>194</sup>

The events leading up to the constitutional challenge of South Hadley’s dress

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186. See *id.* at 660.

187. See *Chalifoux*, 976 F. Supp. at 669.

188. See *id.*

189. See *id.*

190. See *id.*

191. See *id.*

192. See *Pyle v. S. Hadley Sch. Comm.*, 861 F. Supp. 157 (D. Mass. 1994).

193. See *id.*

194. See *id.*

code began with two brothers, Jeffrey and Jonathan Pyle, and their decision to wear T-shirts with wording that was suspect under the school's Personal Appearance Policy.<sup>195</sup> The first act in this drama occurred on March 24, 1993, when Jeffery wore a T-shirt to his gym class that bore the slogan "Coed Naked Band: Do It to The Rhythm."<sup>196</sup> Jeffery's gym teacher told him that his shirt was unacceptable and told him not to wear it again.<sup>197</sup> He wore it again to his next gym class.<sup>198</sup> Jeffery was sent to the principal's office, but the acting principal was unsure whether the T-shirt violated the school's dress guidelines, so no action was taken against Jeffrey at this time. The decision was made to take up the subject of the dress code at the April 6, 1993 school committee meeting.<sup>199</sup>

Before the April 6th school committee meeting Jeffrey wore two new T-shirts to gym class. One depicted two men kissing with the words "Read My Lips." The other shirt depicted a marijuana leaf with the words "Legalize It."<sup>200</sup> Jeffery was not reprimanded for wearing these shirts.<sup>201</sup>

At the April 6th school committee meeting, the committee decided not to punish Jeffrey for wearing the "Coed Naked Band" T-shirt.<sup>202</sup> On April 20th the school committee voted to amend the dress code to prohibit clothing: 1) that contained vulgar comments or designs; 2) that was intended to harass or demean an individual because of sex, race, religion, handicap or sexual orientation; and 3) that depicted alcohol, drugs or tobacco products.<sup>203</sup> It allowed students to express political views, if not expressed in a vulgar manner. This dress code amendment took effect on May 3, 1993.<sup>204</sup>

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195. See *id.* at 162. The school guide sent to students at the beginning of each school year had a section entitled personal appearance, which read:

Personal appearance should not disrupt the educational process, call attention to the individual, violate federal, state, or local health and obscenity laws, or affect the welfare and safety of the students, teachers, or classmates. Students will be asked to change inappropriate attire.

*Id.*

196. See *id.* at 163.

197. See *Pyle*, 861 F. Supp. at 166. Pyle's gym teacher explained her ground rules of acceptable attire. She prohibited in class T-shirts that targeted or harassed a person because of race, sex, religion, or sexual orientation. *Id.*

198. See *id.*

199. See *id.* at 170.

200. See *id.*

201. See *id.*

202. See *Pyle*, 861 F. Supp. at 161.

203. See *id.* at 162.

204. See *id.* The dress code amendment read in full:

Students, therefore, are not to wear clothing that:

1. Has comments or designs that are obscene, lewd or vulgar.
2. Is directed toward or intended to harass, threaten, intimidate, or demean an individual or a group of individuals, because of sex, color, race, religion, handicap, national origin, or sexual orientation.
3. Advertises alcoholic beverages, tobacco products, or illegal drugs.

If such clothing is worn to school, students will be required to change or will be sent home to do so.

Clothing expressing political view is allowed as long as the views are not expressed in a lewd, obscene or vulgar manner.

On May 3rd, Jeffrey wore a T-shirt that read "Coed Naked Civil Liberties: Do It to the Amendments" to school.<sup>205</sup> On the same day, his brother Jonathan wore a T-shirt with the slogan "See Dick Drink. See Dick Drive. See Dick Die. Don't be a Dick." to school.<sup>206</sup> Both were sent to the principal's office and then they were sent home.<sup>207</sup>

On May 5th, the school committee lifted the prohibition on the "Civil Liberties" and "See Dick" shirts.<sup>208</sup> But when the committee met again on May 11th, it reversed this decision and prohibited the T-shirts.<sup>209</sup> The committee also gave the school administration the authority to interpret and enforce the school dress code.<sup>210</sup>

Also, on May 11th, Jonathan wore a T-shirt with the words "Coed Naked Gerbil" on the front and "Some People will Censor Anything" on the back.<sup>211</sup> He was sent to the office, but the administration found that the T-shirt did not violate the school dress code.<sup>212</sup>

On May 14th, Jonathan wore a T-shirt that read "Coed Naked Censorship—They Do It at South Hadley" to school. He was sent to the office, but the principal determined that the T-shirt was acceptable. Over the next week, the brothers wore the "Civil Liberties" T-shirt, which was acceptable; the "See Dick" T-shirt, which was unacceptable; and the "Coed Naked Band" T-shirt, which was unacceptable. The school year ended shortly after that.<sup>213</sup>

The court, in analyzing the constitutionality of South Hadley High School's dress code, looked at both the prohibition of vulgarity and the prohibition of clothing that "harasses, threatens, intimidates or demeans" individuals or groups.<sup>214</sup>

On the issue of vulgarity, the court granted that schools have a great deal of latitude in defining vulgarity. "The First Amendment limits minimally, if at all, the discretion of secondary school officials to restrict so called 'vulgar' speech . . . ."<sup>215</sup> The court emphasized that it is not the role of the judiciary to decide the definition of vulgarity.

The question then becomes, who decides what is "vulgar"? The answer in most cases is easy: assuming general reasonableness, the citizens of the community, through their elected representatives on the school board and the school

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This policy will become effective per the direction of the South Hadley School Committee on Monday, May 3, 1993.

*Id.*

205. *See id.*

206. *See id.* at 163.

207. *See Pyle*, 861 F. Supp. at 163.

208. *See id.*

209. *See id.*

210. *See id.*

211. *See id.*

212. *See id.* at 164.

213. *See Pyle*, 861 F. Supp. at 164.

214. *Id.*

215. *See id.* at 159.

administrators appointed by them, make the decision. On questions of coarseness or ribaldry in school, federal courts do not decide how far is too far.<sup>216</sup>

The court held that the school's restriction on clothing that harasses or demeans individuals or groups was not allowed except when the clothing would cause a substantial risk of a material and substantial disruption.<sup>217</sup> The court wanted to avoid the possibility that the school would use this prohibition to limit expression of opinion on controversial issues.

The First Amendment does not permit official repression or homogenization of ideas, even when the expression of these ideas may result in hurt feelings or a sense of being harassed. A school committee may not ban speech other than that reflecting the dominant or most comforting ethos . . . [W]here it is not disruptive or vulgar, a student's personal expression may not be censored on the basis of its content.<sup>218</sup>

The court concluded that there are at least three approaches to the First Amendment rights of students in public high schools. First, plainly offensive (vulgar) speech may be prohibited without showing that the speech would have a substantial risk of causing a disruption or interference with the school's work.<sup>219</sup> Second, school sponsored speech may be restricted when the limitation is reasonably related to genuine educational concerns.<sup>220</sup> Third, if the speech is neither vulgar nor school sponsored, it may be prohibited only when it will cause a substantial and material disruption of the school's operation.<sup>221</sup>

#### F. Recent Challenges

Public school districts continue to face challenges to their dress codes. In 1999, students ran afoul of school dress codes by wearing a Star of David, a cross, the word "vegan," and a pentagram.

In Mississippi, Ryan Green was told that he could not wear his Star of David necklace openly because it would violate the school's dress code.<sup>222</sup> The Star of David was considered a gang symbol.<sup>223</sup> Green filed suit against the school board.<sup>224</sup> The board then voted to exempt religious symbols from the list of prohibited items in the dress code.<sup>225</sup> The School Board acknowledged that the dress code violated Green's right to freedom of religion.<sup>226</sup>

In Alabama, Kandice Smith wore a cross necklace to school as an expression

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216. *Id.*

217. *See id.* at 160.

218. *Pyle*, 861 F. Supp. at 159-60.

219. *See id.* at 164.

220. *See id.*

221. *See id.*

222. *See Star of David*, *supra* note 49.

223. *See id.*

224. *See id.*

225. *See id.*

226. *See id.* ("We realized that it infringed on freedom of religious expression, and that freedom supercedes the safety issue.").

of her Christian faith.<sup>227</sup> She was told that she could not wear it openly because the school dress code prohibited the wearing of visible jewelry.<sup>228</sup> The school had not experienced a problem with violence.<sup>229</sup> The dress code was "a way to combat income-based jealousy and competitiveness among students," according to the attorney for the school board.<sup>230</sup> Another purpose of the dress code was to reduce the school's high drop out rate.<sup>231</sup> Smith requested an exemption for her religious beliefs, but her request was denied.<sup>232</sup> The school board did not explain how Smith's cross caused jealousy or contributed to the school's drop out rate.<sup>233</sup> Smith filed suit against the school board to protect her right to wear her cross.<sup>234</sup>

In Utah, John Ouimette was asked to remove a T-shirt that he wore to school that read "Vegans Have First Amendment Rights."<sup>235</sup> The word "vegan" was banned by the district school board because some vegans are members of the violent gang Straight Edge.<sup>236</sup> Vegans are people opposed to the consumption or mistreatment of animals.<sup>237</sup> Ouimette was not a gang member<sup>238</sup> and claims that veganism is a moral belief.<sup>239</sup> He sought an injunction in federal court that would allow him to express his beliefs.<sup>240</sup>

In Michigan, Crystal Seifferly was told that she could not wear her pentagram<sup>241</sup> necklace openly under her school's dress code policy.<sup>242</sup> Seifferly wore her pentagram as an expression of her belief in Wicca,<sup>243</sup> an earth-based religion based on the natural cycles of life.<sup>244</sup> Wicca is a growing spiritual practice

227. See *Alabama Girl*, *supra* note 52.

228. See *id.*

229. See *id.*

230. See *id.*

231. See *id.*

232. See *id.*

233. See *Alabama Girl*, *supra* note 52.

234. See *id.*

235. See *Vegans*, *supra* note 47; Naomi Schaefer, *Houses of Worship: A Clash of Symbols*, WALL ST. J., Aug. 27, 1999, at W13; Jennifer Toomer-Cook, *Defense Rejects Olive Branch in Vegan T-shirt Case*, DESERT NEWS (SALT LAKE CITY, UT), Aug. 26, 1999, at B2.

236. See *Vegans*, *supra* note 47. All members of Straight Edge are vegans who also abstain from alcohol, smoking, and extramarital sex, and who assault those who do not share their lifestyle. See *id.*

237. See *id.*

238. See *id.*

239. See *id.* ("[F]or many people, vegetarianism is a matter of ethics rooted in the humane treatment of other animals and reverence for life. Philosophers from the Buddha and Plato through Voltaire, Thoreau and Gandhi have advocated vegetarianism.").

240. See Toomer-Cook, *supra* note 234.

241. David Gibson, *Caught Up in the Craft Teenage Girls Embracing the Rituals of Witches*, REC. N. N.J., May 13, 1999, at A1. The pentagram is a five-pointed star. The points represent the spirit and the elements of earth, air, fire, and water.

242. Justin Hyde, *Pentagram Ban Debated in Court*, GRAND RAPIDS PRESS, Mar. 3, 1999, at B4. (stating the school "banned groups such as 'KKK, Skin Heads, Wiggins, Pagans, Satanists, Cults/Occult, Street Gangs, White Supremacists, Straight Edge, Gothic, Vampires, Witches.' And it banned pentagrams like Seifferly's, along with black nail polish, dog collars and 'death-style makeup.'")

243. See *id.* Seifferly claimed that the pentagram was an important part of her Wiccan practice. See *id.*

244. See Gibson, *supra* note 240. The word "wicca" comes from the old English term for witch. See *id.*

with many followers.<sup>245</sup> The school banned witches and claimed that the pentagram was an advertisement for gangs and satanic activity.<sup>246</sup> Seifferly brought suit against the school, which responded by removing the word witches from its list of banned activities and recognizing the pentagram as a religious symbol.<sup>247</sup>

Each of these recent cases highlights the continuing battle in public schools over dress codes, as school boards and administrators struggle to draft policies that achieve their goal of providing a disciplined environment for learning while simultaneously not unduly suppressing students' rights to freedom of speech and religion.

## V. THE IMPERFECTION OF DRESS CODES IN PUBLIC SCHOOLS

Public school dress code policies are an imperfect solution to the problems of school violence and academic performance because dress codes are subject to constitutional challenges while not completely dealing with the problems that the policies were intended to address. Dress codes have been attacked for being too vague, creating a danger of arbitrary enforcement by school officials. Dress codes may be overbroad and prohibit constitutionally protected expression of speech and religion. Narrowly drafted dress codes may miss the symbols and apparel that interfere with the discipline of the learning environment. There is no evidence that dress codes reduce the competition among students for expensive clothing that can lead to social discord and sometimes violence. Finally, similar dress codes are being challenged in different jurisdictions for similar reasons, and these challenges may continue to face all districts with dress codes. For these reasons, dress codes do not provide the answers that school districts are seeking.

### A. Vagueness and Arbitrary Enforcement

Several public school dress codes have been successfully challenged because they were unconstitutionally vague and created a danger of arbitrary enforcement.<sup>248</sup> In *Stephenson*, the school determined that a cross tattoo was a gang symbol and forced a young girl to undergo a painful operation, even though the tattoo was not considered a gang symbol by Stephenson or her peers.<sup>249</sup> In *Chalifoux*, two young men were prohibited from expressing their faith by wearing rosaries at school because a police officer had decided that rosaries were gang symbols.<sup>250</sup> The courts in each of these cases held that the school dress code was vague because students were not provided a list of prohibited apparel and items.<sup>251</sup>

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245. *See id.* (“[Wicca] is an amalgam of many pre-Christian practices, a modern-day reinterpretation of older myths, beliefs, and rituals that today take many different forms.”). Some witches claim that there are three to five million practitioners; experts say that there are about 400,000 practitioners. *See id.*

246. *See* Hyde, *supra* note 241.

247. *See id.*

248. *See* discussion *supra* Part IV.

249. *See* discussion *supra* Part IV.B.

250. *See* discussion *supra* Part IV.D.

251. *See* discussion *supra* Part IV.B. & D.

The students were made to guess as to what might be prohibited. Since there were no adequate definitions for school officials to follow, school officials had discretion to label anything a gang symbol.<sup>252</sup> To avoid the threats of vagueness and arbitrary enforcement, the courts suggested that the schools provide a list of prohibited items.<sup>253</sup>

#### *B. Overbreadth and Suppression of Constitutionally Protected Rights*

School dress codes can be impermissibly overbroad if they prohibit constitutionally protected expression.<sup>254</sup> In *Gaut*, the court found an ordinance prohibiting the wearing of known gang symbols to be overbroad because it prohibited anyone in the city from wearing the Star of David openly.<sup>255</sup> Clothing may be symbolic speech if there is an intent to convey a particularized message and if there is a likelihood that the message would be understood by those viewing it.<sup>256</sup> If the clothing is symbolic speech, it will be protected in public schools if it is political or religious expression (pure speech) and if the expression will not cause a material disruption to the learning environment.<sup>257</sup> A school dress code that prohibits constitutionally protected expression is overbroad.

#### *C. Incomplete Solution*

Dress codes provide at best an incomplete solution to the problems of violence and disruption in schools. Since regulations must specify what apparel is prohibited to avoid being void for vagueness, there is a chance that the code may miss new gang symbols or styles of dress that are disruptive. Dress codes do nothing to address another source of violence linked to clothing, competition for expensive clothing.<sup>258</sup> School boards that intend to use dress codes to provide a disciplined educational setting for public school students must be constantly vigilant to revise those codes so that they include symbols and clothing that cause disruption without restricting protected speech.

#### *D. Recurring Litigation*

Dress codes face continued challenges as each school district attempts to draft a code that will pass constitutional muster. Even though an ordinance restricting persons from wearing the Star of David was found unconstitutional in Illinois in 1996,<sup>259</sup> a school in Mississippi faced a challenge to its prohibition of the Star of David in 1999.<sup>260</sup> A rosary and crucifix were protected religious speech in

252. See discussion *supra* Part IV.B. & D.

253. See discussion *supra* Part IV.B. & D.

254. See discussion *supra* Part IV.C.

255. See discussion *supra* Part IV.C.

256. See discussion *supra* Part IV.C.

257. See discussion *supra* Part IV.C.

258. See King, *supra* note 24.

259. See discussion *supra* Part IV.C.

260. See discussion *supra* Part IV.F.



Texas in 1997,<sup>261</sup> but a cross was prohibited by a school in Alabama in 1999.<sup>262</sup> Many school districts' 1999-2000 dress codes are drafted in forms that courts may find vague or overbroad. Some ban "gang-related" apparel without defining what gang related is.<sup>263</sup> Some dress codes specifically ban items that some students consider religious symbols, such as a pentagram,<sup>264</sup> or expression of a lifestyle, such as veganism.<sup>265</sup> Other 1999-2000 dress codes ban items in broad categories that may include constitutionally protected symbolic speech.<sup>266</sup> Despite the fact that similarly worded dress codes have been successfully challenged, school districts still draft regulations that may be vague or overbroad, and they will have to go to court to defend these codes.

## VI. THE SOLUTION: UNIFORMS

Uniforms may provide a better solution to the problems of violence and academic performance than dress codes because uniforms will not suffer from the same Achilles' Heels that dress codes do. School districts that implement uniform policies will not be forced to create an ever-changing list of what is not acceptable. Uniform policies do not face the danger of being vague or overbroad. There is little chance of arbitrary enforcement because school officials will be able to refer to a clear guideline. Uniforms will reduce competition among students for expensive clothing. Uniform policies have been implemented in many large school districts across the country with success. Although there has been some opposition, uniforms generally have wide support from community and

261. See discussion *supra* Part IV.D.

262. See discussion *supra* Part IV.F.

263. COMAL INDEP. SCH. DIST. STUDENT/PARENT HANDBOOK (1998-1999). An example of this from Texas is the Comal Independent School District's High School Dress Code.

The dress code guidelines, including but not limited to the following list, will be followed by all students:

1. No gang paraphernalia will be tolerated.

...

3. Hair styles, clothing and accessories which represent gangs or gang-related activity or which cause a distraction are not permitted.

...

5. No clothing decorated with pictures, writing, etc. other than school-related, college-related, or brand-name logos are allowed. Specifically prohibited are clothing, jewelry, exposed tattoos, and accessories depicting mushrooms, alcohol, drugs, weapons, tobacco products, sex, racism, violence, inappropriate language, gestures, pictures, or advertisement. The prohibition includes bands, cults, satanic and demonic activities, and gang-related colors, signs or insignias. Pictures of skulls are not allowed. See *id.*

264. See discussion *supra* Part IV.F.

265. See discussion *supra* Part IV.F.

266. There are several examples from Florida school districts: "Garments and/or jewelry which . . . tend to provoke violence or disruption in school shall not be worn," (Orange County); "Clothing that displays words, phrases, pictures, etc. that give reference to profanity, sex, alcohol, drugs, racial slurs, satanism, etc. is forbidden. . . . Wearing apparel of any type intended to identify a student as a member of a gang or group will not be permitted," (Osceola County); "Clothing or garments (such as black trench coats) that are associated with violence," (Seminole County). Danny Davis, *County by County Look at School Dress Codes*, ORLANDO SENTINEL, Sept. 3, 1999, at X2.

educational leaders.

#### A. *Where They Have Been Implemented*

Many large public school districts have enacted dress codes in recent years.<sup>267</sup> The first school district in the country to require uniforms for all elementary and middle school students was Long Beach, California, in 1994.<sup>268</sup> The Long Beach Unified School District has 83,000 students.<sup>269</sup> Since 1994, uniforms have been mandated in other large districts, including Dade County, Florida, the nation's fourth largest school district, with 340,000 students.<sup>270</sup> In 1998, the New York City school board voted to require uniforms for more than 500,000 elementary students.<sup>271</sup> Many other school districts have followed the lead of these districts.<sup>272</sup>

#### B. *What the Policies Look Like*

Although school uniform policies vary by district, they share some similar characteristics.<sup>273</sup> The United States Department of Education's Manual on School Uniforms contains eight recommendations for school districts considering adopting uniform policies: 1) get parents involved from the beginning; 2) protect students' religious expression; 3) protect students' other rights of expression; 4) determine whether to have a voluntary or mandatory school uniform policy; 5) when a mandatory school uniform policy is adopted, determine whether to have an opt out provision; 6) do not require students to wear a message; 7) assist families that need financial help; and 8) treat school uniforms as part of an overall safety program.<sup>274</sup> The Long Beach Unified School District has an opt out provision, but less than one percent of parents requested an exemption for their children in the 1995-96 school year.<sup>275</sup> At George Washington Middle School in Kansas City, Missouri, students receive uniforms at no cost.<sup>276</sup> Even when parents must pay for uniforms, the cost is low.<sup>277</sup> In New York City, the style and color of the uniform is decided by each school, financial assistance exists for parents that cannot afford uniforms, and there is an opt out provision.<sup>278</sup> Several school districts have voluntary uniform policies, and the number of students choosing to

267. See MANUAL ON SCHOOL UNIFORMS, *supra* note 7.

268. See Jessica Portner, *Calif. District Points to Uniforms For Plunging Crime Rate*, Education Week on the Web, Jan. 21, 1998, at <http://www.edweek.org/ew/vol-17/19longh17> (last visited Oct. 15, 1999).

269. See *id.*

270. See Ihsan K. Taylor, *Majority of Dade School Back Uniforms for Students*, Education Week on the Web, Apr. 30, 1997, at <http://www.edweek.org/we/vol-16/31dadeh16> (last visited Oct. 15, 1999).

271. See Bess Keller, *N.Y.C. Approves Plan for Uniforms in Early Grades*, Education Week on the Web, Mar. 25, 1998, at <http://www.edweek.org/ew/vol-17/28nych17> (last visited Oct. 31, 1999).

272. See MANUAL ON SCHOOL UNIFORMS, *supra* note 7.

273. See *id.*

274. See *id.*

275. See *id.*

276. See *id.*

277. King, *supra* note 24 (stating that the price of uniforms are between \$70 and \$90).

278. See Keller, *supra* note 270.

wear uniforms in those schools is quite high.<sup>279</sup> Although the details vary, many districts seem to be enacting uniform policies within the guidelines set out by the Department of Education.

### C. Support For Uniforms

School uniform programs have enjoyed support from educators, politicians, the legal community, and parents.<sup>280</sup> Although there has been some dissent,<sup>281</sup> many educators have endorsed the introduction of uniforms into America's public schools.<sup>282</sup> There has been strong support for uniforms by political leaders as well, including President Bill Clinton,<sup>283</sup> United States Secretary of Education Richard Riley,<sup>284</sup> and New York City Mayor Rudolph Giuliani.<sup>285</sup>

Members of the legal community have also supported uniforms over dress codes. According to one law professor, uniforms pose a less daunting legal problem than do dress codes because parents are usually involved in the decision to implement uniforms and because there is usually an opt out provision.<sup>286</sup> A 1997 Arizona appellate court decision upheld the constitutionality of a uniform policy.<sup>287</sup> The important factor for the court was the content neutrality of the uniform policy, which affirmatively required a single uniform rather than negatively targeting particular clothing.<sup>288</sup>

Many parents have also supported school uniforms. They like the prospect of a safer and more disciplined school environment and the convenience and low cost of uniforms.<sup>289</sup> A 1996 poll indicated that fifty-three (53) percent of

279. See MANUAL ON SCHOOL UNIFORMS, *supra* note 7.

280. Rene Sanchez, *supra* note 17.

281. Harold Howe II, a retired Harvard University professor of education and former United States Commissioner of Education feels that, "the uniform carries a burden of negative messages along with its positive implications of pride in performance." Harold Howe II, *Leaning Toward the Spartans and Away from the Athenians*, Education Week on the Web, Apr. 3, 1996, at <http://www.edweek.org/ew/1996/28howeh15> (last visited Oct. 15, 1999). Norman Issacs, principal of Millikan Middle School in Sherman Oaks, California, opposes school uniforms and he believes that students need to learn to make choices and decisions based on internal values. Kathleen L. Paliokas and Ray C. Rist, *Do They Reduce Violence—or Just Make Us Feel Better?*, Education Week on the Web, Apr. 3, 1996, at <http://www.edweek.org/ew/vol-15/28risth15> (last visited Nov. 1, 1999).

282. A number of surveys demonstrate support of uniforms by principals and teachers. A National Association of Secondary School Principals survey of 5,500 principals showed that seventy percent believed that mandatory uniforms lower the incidence of discipline problems. Paliokas and Rist, *supra* note 280. A survey of the United Teachers of Dade County, Florida revealed that sixty percent of the group's members supported mandatory uniforms. King, *supra* note 24. Another national survey, conducted in 1998, showed that eighty percent of elementary school principals surveyed said that uniforms had improved classroom discipline. Rene Sanchez, *supra* note 17.

283. See Remarks by the President on School Uniform Program, Feb. 24, 1996.

284. See U.S. Department of Education Releases First in Series of School Safety Reports, March 19, 1998. U.S. Dept. of Ed. Press Release.

285. See Keller, *supra* note 270.

286. See Perry A. Zirkel, *A Uniform Policy; Assessment of School Uniform Policies*, PHI DELTA KAPPAN, Mar. 1998, at 550.

287. *Id.*

288. *Id.*

289. See Portner, *supra* note 267.

Americans favored mandatory uniforms.<sup>290</sup> A survey of Long Beach's Press-Telegram readers showed that more than eighty (80) percent supported uniforms.<sup>291</sup> The broad support from various members of society has contributed to the spread and legitimization of uniform policies to school districts across America.

#### *D. What the Effects Have Been*

The greatest effect of implementing school uniform policies is the reduction of violence, but there are additional potential benefits as well.<sup>292</sup> According to the Manual on School Uniforms, the potential benefits include: 1) decreasing violence and theft among students over expensive clothing; 2) preventing gang members from wearing gang colors and insignia at school; 3) instilling students with a sense of discipline; 4) helping students resist peer pressure; 5) helping students concentrate on school work; and 6) helping school officials recognize intruders who come on campus.<sup>293</sup> Educators have reported that students are more serious, better behaved, more focused on studies, and have higher self-esteem; lower absenteeism; decreased ethnic and racial tensions; and improved academic performance.<sup>294</sup> Educators also claim that making students wear uniforms will reduce competition among students to dress in trendy clothing, and thereby eliminate another distraction to the learning environment.<sup>295</sup>

The reduction in violence by the institution of uniforms is best illustrated by the Long Beach Unified School District.<sup>296</sup> Between the 1993-94 school year and the 1996-97 school year, school crime fell by seventy-six (76) percent.<sup>297</sup> No other security measures were adopted that would account for the drop in crime. During the same period, attendance reached an all time high of ninety-four (94) percent. School officials, parents, and the community have been pleased with the results in Long Beach.<sup>298</sup> The success in Long Beach has led to that program being used as an exemplar for other school districts.

#### *E. The Advantages Over Dress Codes*

Uniform policies enjoy several advantages over dress codes. Since uniform policies affirmatively require a specific mode of dress, there is less danger of uniform policies being vague or overbroad. What students are expected to wear is stated clearly in uniform policies. Uniforms address problems that dress codes cannot, such as competition among students to own expensive clothing. Parents,

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290. *See id.*

291. *See* MANUAL ON SCHOOL UNIFORMS, *supra* note 7.

292. *See id.*

293. *See id.*

294. Paliokas and Rist, *supra* note 280.

295. *See* Portner, *supra* note 267.

296. *See id.*

297. *See id.*

298. *See id.*

on the average, spend less for uniforms than for non-uniform clothing. Uniforms have been responsible for dramatic drops in school violence and have contributed to a more disciplined learning environment. Uniforms have survived legal challenges and will probably continue to do so. Therefore, uniforms provide an alternative to dress codes that better serves the interest of the government in educating America's youth.

## VII. CONCLUSION

The state has an interest in educating the nation's youth. To do this, school districts must maintain a disciplined learning environment. But students have basic constitutional rights that must be balanced against the state's interest.

One way that school boards have attempted to create a safe and orderly classroom is by enacting dress codes. Unfortunately, dress codes are inherently flawed. They have faced and will continue to face challenges because they do not pass constitutional muster. Dress codes have been invalidated because of vagueness and overbreadth, and many dress codes that have yet to be challenged carry the same flaws as those that have been struck down. Dress codes also have the potential to miss the problems that they were intended to address as gangs adopt new symbols or as students compete over expensive clothing. These Achilles' Heels lead to the conclusion that there must be a better answer.

Uniforms have grown in popularity over the last half of the 1990s. Uniforms have improved classroom discipline and reduced violence. Uniforms enjoy broad support from educators, lawmakers, and parents. Uniforms have survived legal challenges. Uniform policies are usually not vague or overbroad. These policies affirmatively identify what is proper for students and do not face the danger of arbitrary enforcement. The success of school uniforms has led to their adoption in the nation's largest school districts.

If school districts must restrict students' appearance to maintain discipline in the learning environment, instead of relying on inherently weak dress codes, school boards should consider enacting uniform policies, which have a proven record of success.

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